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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/824,384	04/15/2004	Martin Kleen	32860-000726/US	6632

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HARNES, DICKEY & PIERCE, P.L.C.
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RESTON, VA 20195

EXAMINER

LEUBECKER, JOHN P

ART UNIT	PAPER NUMBER
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3739

MAIL DATE	DELIVERY MODE
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09/25/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/824,384

Applicant(s)

KLEEN ET AL.

Examiner

John P. Leubecker

Art Unit

3739

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 03 July 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-21,23-37,39-42 and 44-47 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-21,23-37,39-42 and 44-47 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
- 1) ☒ Certified copies of the priority documents have been received.
 - 2) ☐ Certified copies of the priority documents have been received in Application No. _____.
 - 3) ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Rejections - 35 USC § 103

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 1-5, 7, 9, 11, 15-21, 25-27, 34-37, 39, 40, 42 and 45-47 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meron et al. (WO 00/22975) in view of Madar et al. (US 2004/0092825) for the reasons set forth in numbered paragraph 4 of the previous Office Action, paper number 20070329.

Claims 18, 34 and 42 have been amended to include structure or steps related to the “opening and closing” of the container or the “repeated actuation” of a mechanism controlling the opening and closing of the container. Since these limitations were addressed in the previous 103(a) rejection over Meron et al. in view of Madar et al., claims 18, 34, and 42 (as well as dependent claims) are now included in this rejection.

3. Claims 6, 8, 10, 12-14, 23, 24, 28-33, 41 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Meron et al. in view of Madar et al., as set forth above, and further in view of Bertera (U.S. Pat. 5,368,582) for the reasons set forth in numbered paragraph 5 of the previous Office Action, paper number 20070329.

Response to Arguments

4. Applicant's arguments filed July 3, 2007 have been fully considered but they are not persuasive.

Applicant argues that Madar et al. “does not disclose explicitly or implicitly using valves and corresponding commands that enable repeatable actuation of the valves or allow an opening and subsequent closing of the valves” (page 10, first paragraph of Remarks). The Examiner respectfully disagrees. Although the ordinary meaning of “valve” conveyed to the ordinary person would more than likely imply that such valve functions to open and close (i.e., faucet), the Examiner finds that the Madar et al. reference itself implies such functioning. For instance, paragraph [0157], when describing the functioning of the capsule device, states that “For example, reservoir 372a releases some of its contents at a leading edge of the capsules movement through the lumen so that the contents are taken up by the cells in the lumen wall by the time the optical window 312 passes over that section.” (underlining added). If it just opened and dumped all of the contents, the author of the Madar et al. specification would not have used the word “some”. This in itself implies that the valves are “controllable” to both open and close. Furthermore, certain parts of the specification including the Abstract (note last sentence), imply that multiple “sites” are treated. If the medicine in reservoir (372b) was totally expelled at one site, multiple sites could not be treated.

Therefore, the Examiner takes the position that Madar et al. does indeed at least implicitly disclose repeatable actuation of the valves and that one of ordinary skill, taking the Madar et al. disclosure as a whole, would have recognized that “repeatable actuation” of the valves was contemplated.

Conclusion

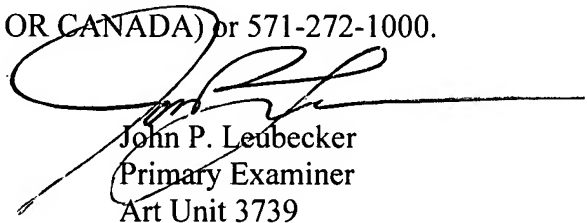
5. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John P. Leubecker whose telephone number is (571) 272-4769. The examiner can normally be reached on Monday through Friday, 6:00 AM to 2:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Linda C.M. Dvorak can be reached on (571) 272-4764. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



John P. Leubecker
Primary Examiner
Art Unit 3739

jpl